TESTIMONY OF
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Submitted to the
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives

Hearing On
"Energy Tax Prevention Act of 2011."

February 9, 2011

Good afternoon Chairman Whitfield, Ranking Member Rush, members of the committee. I appreciate the invitation to speak to you today on the proposed "Energy Tax Prevention Act of 2011."

My name is James Goldstene, and I am Executive Officer of the California Air Resources Board, the primary body charged with protecting the air quality and air-related public health in California, and charged with speaking for the state on air quality and climate change issues. I am also a member of the Board of Directors of the National Association of Clean Air Agencies (NACAA), an association of state and local clean air agencies across the country.

Today I would like to share with you my perspective as a state agency administrator and air quality regulator. I am extremely concerned by the attack on states' rights in this legislation.

The issue before us today concerns the preemption of the Clean Air Act, one of the most successful environmental laws in the history of the United States. For forty years, the sensible pollution limits established under the Clean Air Act have dramatically improved air quality and public health, saving hundreds of thousands of lives and generating over two trillion dollars in economic benefits for the American people. For just as long, opponents and their allies in Congress have claimed that environmental regulations will lead to "regulatory train wrecks" and economic devastation. Yet this has not happened. The rules have consistently been less burdensome, less costly, and more beneficial than even their supporters expected. As the Environmental Protection Agency (EPA) begins the process of issuing regulations to curb the serious threat of carbon pollution, I fully expect this pattern to be repeated.

We hear rhetoric that "EPA should not regulate what Congress has refused to legislate." The fact is, EPA is responding to the clear mandate of the Clean Air Act, and is fulfilling the clear intent of Congress that newly-identified public health threats from air pollutants not listed in the Act be addressed. Again and again throughout the Act, Congress repeated the requirement that if EPA finds a pollutant endangers public health, it must regulate. This obligation is clear and unambiguous.

Contrary to claims of a rush to regulation, EPA has been proceeding methodically. EPA's rules have been more than a decade in the making. EPA has moved forward in the past two years with a tailored, measured approach.

The only rule limiting emissions from power plants and factories is permitting requirement for emissions from new and modified sources, and the associated requirement that facilities use the Best Available Control Technology. EPA has used the flexibility of the Clean Air Act to tailor these requirements to the very largest sources of pollution in the country. Between now and 2016, no facility that emits less 50,000 tons of greenhouse gases, the equivalent of burning 100,000 barrels of oil, will need to seek a permit. The accusations of small businesses or residences being caught up in this program are simply wrong.

The claim that permitting would grind to a halt at the start of the program is also false. NACAA recently conducted a survey among its members, and has received responses from 36 states. As of January 2, 2011 – the start of the GHG permitting program – these 36 states together reported a total of 41 pending construction permits that trigger GHG controls. While further sources will be subject to the program later in the year, and more new sources will continue to be proposed, this is hardly the bottleneck that critics envisioned.

Further, this permitting process is business as usual for state and local air quality agencies across the country, which have implemented BACT determinations based on a well-known process for decades. EPA has provided considerable flexibility to state and local agencies in how to run the permitting program so that we can take into consideration the needs of the permit applicants. In my experience, state and local agencies do everything they can to issue permits in a timely manner. The agencies and the applicants are both intimately familiar with the process and will soon be able to accomplish it for carbon pollution as they do for other pollution.

One reason this is true is because the technologies available for reducing carbon pollution are also well-known and available. Until more advanced technologies are available – and I urge Congressional support for research, demonstration, and deployment of advanced low-carbon technologies like renewable energy and carbon capture and storage – until then, the focus is on the use of the most efficient, cost-effective technologies available. And besides reducing greenhouse gases, more efficiency also tends to reduce other harmful pollutants, and often save money in the long-run through less fuel use. For a facility that may measure its lifespan in decades if not generations, why would we not ask that it be built right the first time?

In California, we already have experience with how smoothly this process can work. The Russell City Energy Plant, being built by Calpine Corporation in partnership with GE Energy, was approved last year with the nation's first carbon pollution limits determined in the Best Available Control Technology (BACT) process – before it was required by EPA. The Russell City Energy Plant is a model energy development – sensible, predictable carbon regulation under the Clean Air Act provided Calpine the certainty it needed to invest and create jobs now.

The other major regulatory program that EPA has implemented is the greenhouse gas emission standards for passenger vehicles. These vehicles are not only responsible for 20% of carbon pollution, but also the majority of our oil dependence and trade imbalance. Preempting the authority for EPA to regulate the emissions of vehicles would rob this country of one of its most powerful tools not just to reduce carbon pollution, but also to reduce our dependence on foreign oil, and to save consumers money. And every dollar not spent on foreign oil is a dollar spent here.

Simply maintaining the U.S. Department of Transportation's (DOT's) authority to regulate fuel efficiency is wholly inadequate. For all of its expertise, DOT is prevented by law from promulgating fuel economy standards for more than five vehicle model years at a time – a restriction on lead time that makes long-term product planning, investment, and capital decisions more difficult. Moreover, as we saw in the 1990s and early 2000s, fuel economy standards stagnated year after year and the actual performance of the US fleet declined. While fuel economy standards can complement long-term mobile source greenhouse gas emission reduction strategies, they are in no way a substitute for them.

In contrast, the combined fuel economy and vehicle greenhouse gas emission standards promulgated by EPA and DOT last year represent an important partnership. This approach leverages the strengths of both agencies – EPA's ability to plan for longer product cycles and technology development, DOT's expertise in safety and fleet averaging – and harmonizes the related, but different, aspects of fuel economy and emission standards.

The benefits of this collaboration are huge, and it would be a major loss if EPA is preempted from playing its distinct and very necessary role in the future. To illustrate this point, if the EPA

were not a party to the joint standards for model years 2012 through 2016 promulgated last year, and the rules instead relied only on the authority of DOT, the rulemaking would have resulted in 35% more pollution, and 25% more oil consumption.

California is also a crucial partner in this effort. The "national program" of harmonized emissions and fuel economy standards for model years 2012-2016 is a remarkable, and all-too-rare, example of successful cooperation between government, industry, environmental groups, labor, and other stakeholders. California remains committed to the process of working closely with our partners to do everything we can to repeat the experience in the next round of standards for 2017-2025. And as with the first round of harmonized standards, technical differences may remain between our programs, yet we can accommodate these differences through coordinated measurement and compliance systems, achieving the *functional equivalent* of a single national standard.

We are building on a firmly established precedent and foundation of national environmental policy. Since the early 1960s, California has established pollution standards for new vehicles sold in the state, predating even the federal government's efforts in this arena. And the pattern has continued – since the 1980s, each successive California standard has gone on to become the national standard. In that time, cars have become 99.7% cleaner – all while the auto industry has innovated to continue providing consumers with the amazing diversity and quality of affordable vehicle choices that we enjoy today.

In 1990, Congress recognized the value of this state authority, and the benefits of this cooperative federalism, and extended the ability of other states to adopt California's standards in

Section 177 of the Clean Air Act. These "Section 177" states have acted, like California, to address their own extraordinary and compelling conditions with our cost-effective standards.

Section 177 states rely on California standards to help meet their air pollution and public health goals, and have done so for a long time. When Congress proposes to preempt California, it must also consider the impacts on the much broader array of states that have adopted California's standards or may wish to do so in the future. One of the great myths underlying assaults on the Clean Air Act is that California's statutory authority to adopt and enforce motor vehicle standards, and the statutory authority of other states to adopt these standards, will lead to a "patchwork" of regulations across the US. This is simply not true. There are at most two car standards – the federal and the state standards. And often times the two become aligned and there is only one.

Preempting California's ability to set carbon pollution standards for vehicles would also increase costs to California consumers. California has an extensive and sophisticated program to reduce carbon pollution with the least cost and maximum benefits to our residents and industry. Our plan addresses every major category of emission sources, and the light duty vehicle standards are the primary tool for addressing transportation emissions. These vehicle standards are one of the most cost-effective measures in California's plan, saving consumers for example an average of $2000 over the life of a vehicle. If Congress strips us of this tool and handcuffs our ability to use the most effective and money-saving options to reduce emissions, it will increase the obligation and burden on other sectors of the economy. Congressional preemption of our state authority will unquestionably lead to increased costs for California consumers and industry.

The negative economic impacts of the proposed legislation are not limited to California, however – the legislation would forestall needed and available investment in the energy sector now, and threaten the competitiveness of the American economy in the long run. Investors in the energy sector are not sitting on the sidelines in blind fear of regulations and ideological opposition to reasonable pollution controls – we know that when government provides clear signals and a predictable regulatory environment, industry is quick to adapt, seize investment opportunity, and create good jobs along with profits. In California, where we worked hard to create a long-term plan for reducing carbon pollution, the investment in clean technology sectors like renewable energy, carbon capture and storage, and cleaner manufacturing has been tremendous. In the face of this recession, clean technology has been the fastest growing sector in California.

In a global investment context, the failure of the US to create a stable policy structure for addressing emissions is already undermining our competitiveness. For clean technology companies, but also for major traditional energy and industrial firms that accept the overwhelming scientific evidence of climate change and policy imperative for emission reductions, the failure of Congress to pass climate legislation is itself increasing the uncertainty for investors. By going further, and gutting the Clean Air Act to remove sensible EPA regulations, the proposed legislation would send the stark message that the US is not serious about creating a stable or predictable regulatory environment, not serious about attracting investment, and not serious about being a leader in the future economy.

Thank you for the opportunity to present this testimony today, and I would welcome the opportunity to answer any questions you may have.